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## FISCAL IMPACT REPORT

SPONSOR: Swisstack DATE TYPED: 310/03 HB 783/aHCPAC

SHORT TITLE: NM Drug, Device & Cosmetic Act Violations SB \_\_\_\_\_

ANALYST: Wilson

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$Insignificant		

Relates to the other Emergency Preparedness Bills: HB 231, HB 232, HB 253, HB 254, SB 194, and SB 364.

### SOURCES OF INFORMATION

Responses Received From  
 Attorney General’s Office (AGO)  
 Department of Health (DOH)  
 Administrative Office of the Courts (AOC)  
 Board of Pharmacy (PB)

### SUMMARY

#### Synopsis of HCPAC Amendment

The House Consumer & Public Affairs Committee amendment adds a definition for “emergency prescription dispensing.”

#### Synopsis of Original Bill

House Bill 783 amends Section 26-1-7 NMSA to eliminating the right to a Pharmacy Board (PB) hearing prior to prosecution for any violation of the New Mexico Drug, Device and Cosmetic Act.

HB 783 amends Section 61-11-6 NMSA to require the PB to adopt rules and regulations prescribing the activities and duties of pharmacy owners and pharmacists in the provision of emergency prescription dispensing. This bill also requires the PB to adopt rules for the authorization of emergency prescription dispensing by the executive director of the PB.

### Significant Issues

In the past few years, New Mexico has experienced public health emergencies due to forest fires causing the displacement of citizens from their homes and unable to contact their regular pharmacies and medical professionals to obtain needed medications. Although there were statutory provisions address this situation for short terms (72) hours, there was nothing in place for longer terms. Citizens did not do without medications during these periods mentioned previously, but having statutes and regulations in place would provide legal guidance.

HB 783 is an outgrowth of the 2002 Senate Joint Memorial 64 and House Joint Memorial 32 asking the DOH, the AGO and the Department of Public Safety to hold public meetings requesting input regarding the changes or additions that need to be made in New Mexico's emergency preparedness laws. HB 783 is the result of a proposal the PB adopted at its October 1, 2002 meeting.

Two different concerns are addressed: (1) that specific medications might be required to treat people for effects of a bio-terrorist event, and (2) that people displaced from their homes might need refills of their ongoing medications.

Criminal offenders of the Drug, Device and Cosmetic Act cannot be prosecuted without appearing before the Board of Pharmacy as 26-1-7 reads now. Assistant Attorney General representatives for the past several years have advised the PB this portion of the statute needs to be changed or the PB could find themselves spending all their meeting time listening to criminal cases.

### **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for the AOC for statewide update, distribution, and documentation of statutory changes. The PB will also incur a very small cost to promulgate the required rules.

### **ADMINISTRATIVE IMPLICATIONS**

The PB must prepare and adopt rules and regulations prescribing the activities and duties of pharmacy owners and pharmacists in the provision of emergency prescription dispensing.

### **RELATIONSHIP**

HB 783 relates to the other Emergency Preparedness Bills: HB 231, HB 232, HB 253, HB 254, SB 194, and SB 364.

### **TECHNICAL ISSUES**

DOH notes the term "emergency prescription dispensing" is not defined. Thus, it is unclear whether this means that a physician's prescription would not be necessary, or merely that physicians' prescriptions would be filled in an expedited manner.

The term "emergency" is also not defined, leaving it unclear under what conditions emergency

prescriptive dispensing might be allowed, and what the scope of the PB's rules should be.

The PB notes the new language inserted on Page 12 line 20 granting the PB authority to adopt rules authorizing the director of the board of pharmacy to dispense prescriptions might be a problem if the director is not a pharmacist or is otherwise unauthorized to dispense prescriptions. The language could be written to clarify who is authorized to dispense prescriptions.

### **OTHER SUBSTANTIVE ISSUES**

The provision on emergency dispensing is aimed at allowing rapid dispensing of prescription medications in an emergency situation. It seems likely that it is meant to address concerns about bio-terrorist events as well as natural disasters. It could cover situations in which people needing prescription refills do not have normal access to pharmacies, and the use of medications specifically to treat bio-terrorism-related events.

During the Cerro Grande fire of May 2000, the cities of White Rock and Los Alamos were evacuated. Many of the evacuees were unable to complete the necessary steps to refill their prescriptions for essential medications. In the event of another such emergency, the BP needs to have the legal authority to waive the usual requirements for filling prescriptions so that people can obtain their needed, and often life-sustaining, medications.

Concerns do arise concerning the dispensing of new medications (for effects of bioterrorism events) on an emergency basis. There are significant risks associated with this approach, so the circumstances under which this may happen need to be carefully defined.

If such prescribing/dispensing were done hastily, perhaps on a "mass" basis, there would be a significant risk of adverse effects on patients. Some patients would have medical conditions that make a particular medication dangerous for them, and some patients would be on other medications that could interact with the ones being dispensed. Operating in an emergency mode would increase the risk of such issues going undetected; this in turn could lead to serious side effects or even deaths. In a situation of great danger, it could be reasonable to accept these risks; in other situations, they would be unacceptable. Therefore, the definition of "emergency" is very important, because it determines when and under what conditions the provisions of HB 783 would come into play. Similarly, the definition of "emergency prescriptive dispensing" is critical, because it determines how carefully dispensing decisions can be made for each patient.

**DW/yr:njw:yr**